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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/688,970

10/21/2003

Francois Cottard

06028.0027-00

4185

22852

7590

06/25/2007

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP

901 NEW YORK AVENUE, NW  
WASHINGTON, DC 20001-4413

EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

MAIL DATE

DELIVERY MODE

06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/688,970	Applicant(s) COTTARD ET AL.	
	Examiner Eisa B. Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 24-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 24-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

1 This action is responsive to the amendment filed on June 12, 2007.

2 A request for continued examination under 37 CFR 1.114, including the fee set forth in  
37 CFR 1.17(e), was filed in this application after final rejection. Since this application is  
eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)  
has been timely paid, the finality of the previous Office action has been withdrawn pursuant to  
37 CFR 1.114. Applicant's submission filed on 6/12/2007 has been entered.

3 The obviousness rejection of the claims under 35 U.S.C. 103(a) as being unpatentable  
over Laurent et al. (US' 431 A1) in view of Cottard et al. (US' 514 A1) is rendered moot in view  
of the comparative data provided in the declaration filed 6/12/2007.

#### New ground of rejection

##### *Double Patenting*

4 The nonstatutory double patenting rejection is based on a judicially created doctrine  
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or  
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible  
harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection  
is appropriate where the conflicting claims are not identical, but at least one examined  
application claim is not patentably distinct from the reference claim(s) because the examined  
application claim is either anticipated by, or would have been obvious over, the reference  
claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*  
*Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225  
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*  
*Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163  
USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may  
be used to overcome an actual or provisional rejection based on a nonstatutory double patenting  
ground provided the conflicting application or patent either is shown to be commonly owned  
with this application, or claims an invention made as a result of activities undertaken within the  
scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal  
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR  
3.73(b).

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Claims 1-17 and 24-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-98 of U.S. Patent No. 6,602,303 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the US. Patent No. 6,602,303 B2, teach and disclose similar hair dyeing compositions comprising at least one oxidation base, at least one fatty alcohol and at least one cationic poly(vinylactum) polymer as claimed in the instant claims (see claims 1-98 of the US. Patent No. 6,602,303 B2). Therefore, this is an obvious formulation.

Although, the claims of the US. Patent No. 6,602,303 B2, teach and disclose similar hair dyeing composition, they are not identical to the instant claims because the claims of the US Patent No. 6,602,303 B2, require a combination comprising at least one compound chosen from oxyalkylenated fatty alcohols and glycerolated fatty alcohol and at least one hydrogenated solvent having a molecular weight of less than 250 to be presented in the composition, while the instant claims require at least one C<sub>10</sub>-C<sub>14</sub> fatty alcohol to be presented in the dyeing composition. Therefore, the conflicting claims are not identical.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a dyeing composition to arrive at the claimed invention because the claims of the US. Patent No. 6,602,303 B2 teach and disclose a composition comprising specific fatty alcohols that fall within the broad genus fatty alcohols of the claimed invention, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

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***Response to Applicant's Arguments***

5 Applicant's arguments with respect to the rejection mailed on June 13, 2006, have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa Elhilo/  
Primary Examiner, A.U. 1751

June 21, 2007